41-P

Previous references.
Govt Note No. 11387/Ex.7-3-01
d. 7-1-02.
-do- No. 167/Ex.7 21-95
d. 29.9.02

1909.
(Sep. Rev.)

Later references.

File No. 220-09

Serial Nos. 1-2

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for November 1910.

SUBJECT.

Rules for the disposal of articles confiscated under the Excise Regulation.

1 From the Excise Comr. No. 9286 d. 25.4.10
submitting for the approval of Govt a draft notn & a draft Circular proposed to be issued by him on the subject mentioned above, as there are at present no rules to guide the magistrates and the departmental officers.

2. To the Excise Comr. Registrar Chief Court
No. 2e. 2630-1. d. 22.11.10
approves of the draft notification & the Circular order.

G.R.S.11] 1909

GENERAL AND REVENUE SECRETARIAT

(G.M.)

NOTES.

File No. 220.09

FILE HEADING.

Rules for the disposal of articles confiscated under the Excise Regulation.

From The Excise Comr.

No. 9286 Dated 25/4/10 Received 29.4.10

Diary No. 4380 Enclos. 2 & One Spare Copies Serial No. 1

BRIEF ABSTRACT OF LETTER.

Submits for the approval of Govt. a draft notification and a draft circular proposed to be issued by him on the subject as there are at present no rules to guide the Magistrate and the Departmental Officers.

NOTES AND ORDERS.

The draft rules now submitted by the Excise Comr. are a faithful copy of the Madras rules. And the circular order is a copy of the Subsidiary instructions on the subject

NOTES—First sheet

GPB—30,000—3-4-07.

G. R. S. 12]
General and Revenue Secretariat.

8/4 File No. 220 of 1909

Serial No.

issued by the Commr of Salt & Abkari Madras. Both the rules & the Circular order may be ~~issued~~ approved as they appear to be quite suitable. The rules referred to are intended for the guidance of the Magistrates as well as of the Departmental Officers. It is a point for consideration whether the rules if issued by the Excise Comr as is proposed to be done, will be binding on the Magistrates under the following circumstances:-

1) Under Sec. 29 the Govt may from time to time frame rules (c) for the disposal of articles confiscated and of the proceeds thereof.

2) Sec. 69. All rules made and notifications issued under this Regn shall be made & issued by publication in the Official Gazette provided that all such rules & notns whereby the doing or not doing of any thing is made

NOTE—Contn. sheet.

GPB—55,000—27.4.09

Serial No.

of any thing is made punishable shall be published in 3 successive issues of the Official Gazette. All such rules & notes shall thereupon have the force of law and be read as part of this Regulation, and may in like manner be varied superseded or annulled.

3) By clause VIII of Govt. notn. no 11287-Ex.3 of 27/10/09, powers of Govt. to frame rules under Sec 29 are delegated to Excise Comr. so far as they relate to points not specially provided for in the rules framed by Govt.

There is no provision in the rules framed by Govt. for the disposal of confiscated articles except in the case of cereals which is proposed to be superseded by the proposed rules -

4) Para 110 of the Govt. addressed letter to the Excise Comr. no

GPB—55,000—27.4.09

G.R.S. 12]
General and Revenue Secretariat.

S/4 File No. 220 of 1909

Serial No.

1578 23/12/09 Seems to imply that the rules should be issued by Govt. alone. But he does not seem to have been aware of the delegation of the powers of Govt. under Sec 29 to the Ex Comr. Submitted with draft of proposed Notification Circular, for approval or other orders

Dve 5/5/10

WR 5/5/10

Please submit on my return from leave (5 days)

1/5/10. SH

Received 27/5/10

WR 27/5

(1) The proposed notification seems to be all right and may be approved.

(2) The Circular memorandum proposed to be issued does not seem to be in order. Confiscation by the Collr can be ordered by the officers of the Excise dept only under para 3 of Sec 66 of the Excise Regn, which directs that the power shall be Exercised by the Excise Comr or some other officer authorized by the Govt in that behalf. As no such authorisation has been made by Govt, the issue of the draft Circular memorandum

NOTE—Contn. sheet.

GPB—55,000—27.4.09

Serial No.

may be held in abeyance for the present.

(3) Regarding the question whether the notification can be issued by the Excise Commissioner himself, it appears to me that there is no legal objection to his doing so. The Govt have formally delegated to him under ~~Clause~~ Sec 4(g) of the Reg[n] the power vested in them under clause (c) of Sec 29 and as such the Magistrates attending Confirmation will be bound to follow the directions in the notification. However to obviate all difficulty in the matter the Govt may themselves issue the notification. In this event the preamble of the notification will have to be suitably modified

27/5/10 SH

Sec 7) Deewan through 1802[v]

4/6/10

2361 / 2.6.10 The notification may be issued by Government. For the reasons above stated the proposed circular memorandum appears to be unnecessary 1/6/10.

6459 / 6.10 PD

NOTE—Contn. sheet.

GPB—55,000—27.4.09

I think that a Notification 2/6/10

G. R. S. 12]
General and Revenue Secretariat.

S & R File No. 220 of 1909

Serial No.

And Circulars may be issued that without delay. The Circulars may be issued by the Excise Commr declaring that this issued with the sanction of Govt

Illegible
2 Nov 10

Yrs
4/11/10

I have suitably altered the draft Circulars.

G. K. Devadhar will please bring this up in person tomorrow before issue.

Illegible

4/11/10. Illegible

Excise Order has been brought up with the change made

Illegible

5/11/10.

2 To the Excise Commr
" Registrar Chief Court
No. Je 2630-1 dy 29.11.10
Approves of the draft notification & the circulars order (with addition)

Illegible

NOTE—Contn. sheet.

GPB—55,000—27-4-09

4380

Bgh 220 ccy 8(1)

OFFICE OF THE EXCISE COMMISSIONER IN MYSORE,

No. 9286 / 2 Confdl. *Bangalore, dated....25th April....19 10.*

From

M. Narain Rao, Esquire,

Offg: *Excise Commissioner in Mysore.*

To

C. S. Balasundram Iyer, Esq., B.A.,

Offg: *Secretary to the Government of*
His Highness the Maharaja of Mysore,
General and Revenue Departments.

SIR,

I have the honor to state that at present adequate rules do not exist regarding confiscations ordered under the Excise Regula--tion. The only one to be found is Rule XXXVI of the Rules publishe under Government Notification No. 11387/Ex.F.3-1901, dated 8th Jan--uary 1902. This appears to have been framed under the Excise Act in force prior to the Excise Regulation V of 1901 and confines it--self to arrack. It has reference to rewards which have been separat--ly dealt with in Government Notification No. 167/Ex.F.21-95, dated 28th September 1902.

2. Under clause (O) of section 29 of the Regulation, the -- Government may frame rules for the disposal of articles confiscated and of the proceeds thereof. But so far no comprehensive rules have been framed. I, therefore, propose to issue the appended -- Notification and the Circular Memorandum which fully deal with the question and give clear instructions on the subject. These instruc--tions are based on those obtaining in the Madras Presidency.

3. The correspondence ending with the Chitaldrug Deputy -- Commissioner's docket No. C.63, dated the 15th February 1910 is here--with submitted for reference and kind return.

4. I request you to kindly obtain the early approval of -- Government for the issue of the said Notification and the Circular

220-090
54380

19

From

M. Narain Rao Esquire,

Offg. *Excise Commissioner in Mysore.*

To

C. S. Balasundaram Iyer Esq. B.A.,

Offg. *Secretary to the Government of*
H. H. the Maharaja of Mysore,
Genl. and Rev. Depts.

Dated 28th April 1910

Despatched

Received

General No. 9286

Enclosure No. 2 & one file.

SUBJECT.

Requesting to obtain the early approval of Government for the issue of certain notifications and the circular memorandum re rules for the disposal of articles confiscated under the Regulation and of the proceeds thereof —

GPB--2,000--31-7-09

Circular Memorandum.

I have the honor to be,

Sir,

Your most obedient servant,

Offg: Excise Commissioner.

Draft 10

Notification.

No. dated

In virtue of the powers delegated to him under clause VIII of Government Notification No. 11287/Ex.F.3-1901, dated 7th January 1902, and in supercession of all rules on the subject, the Excise Commissioner in Mysore hereby prescribes under clause (O) of section 29 of the Mysore - - Excise Regulation V of 1901, the following rules for the disposal of articles confiscated under the Regulation and of the proceeds thereof:-

1. When orders are received from competent authority for the confiscation of anything seized or detained under the Regulation, it shall, with all convenient despatch, be sold or destroyed by the person in charge thereof as the Officer ad--judging the confiscation may direct.

2. When a Magistrate adjudging a confisca--tion shall, under the second paragraph of sec--tion 66, offer the owner of such thing the - - option of paying a fine in lieu of confiscation, and if the owner of such thing shall accept such option, he shall be required forthwith to pay -- such sum as may already have been expended on the safe custody and keep of such thing, and to -- deposit such further sum as may appear likely to be required for such purposes until the payment of the fine. Ten days shall be allowed for the payment of such fine, within which period, if the fine be paid, the thing shall at once be given up to the owner together with such part of the sum so deposited as may remain unexpended on such -- purposes. If the fine be not paid within the

said

said period of ten days, the order of confisca-
-tion shall be and remain of full effect in the
same way as if no option of the payment of a --
fine had been offered. There shall be no appea
against the adjudication of an optional fine. An
appeal may be preferred against the amount of --
such fine, provided that the fine has been pre-
-viously paid.

3. No sale of any perishable article - -
ordered to be confiscated shall be post-poned on
account of the preferring of an appea
against the order of confiscation. The sale of
any animal or other thing ordered to be confisca
-ed shall not be post-ponded on such account - -
unless the owner or his agent shall deposit with
the officer ordering the confiscation such sum --
as such officer may consider sufficient for the
keep or safe custody of such animal or other - -
thing pending the result of such appeal. If the
result of such appeal be that the order for con-
-fiscation is reversed, the owner shall be en-
-titled to receive back the whole of the sum so -
deposited.

4. If any order that any article be confis
-cated is reversed on appeal, such article, if it
has not been sold before such reversal comes to
the knowledge of the officer in charge thereof,
or, if it has been sold, the sale proceeds there-
-of shall be dealt with under Rules 5 to 8 - - -
inclusive.

5. Things ordered to be released or their
proceeds, if they have been sold, ~~as the case~~ shall at once
be given up or paid, as the case may be,
~~may be~~, by the person in charge thereof to the --

owner

owner or his agent.

6. Should no one appear to receive a thing ordered to be released or the proceeds thereof, the person in charge thereof shall do his best to give notice to the owner of the order of -- release, and shall cause a notice thereof to be affixed in the village where the seizure of the thing was effected, in the office of the Amildar of the Taluk, and in the nearest Police Station to such village.

7. If within two calendar months from the date of the notice no person entitled to receive a thing ordered to be released claim the same -- and pay all charges incurred on its custody and keep after the date on which the order for its -- release was notified as herein before directed, it shall be sold; the amount of all charges so incurred shall be credited to Government, and the net proceeds shall be placed in deposit. The -- same course shall be followed with reference to the proceeds of a thing ordered to be released which has been sold before the receipt of the -- order of release.

8. If after a further period of two - - calendar months no person shall have appeared to receive the sum so placed in deposit, it shall be forfeited to Government.

9. The sale proceeds of all confiscated articles shall be paid into the nearest Govern--ment treasury without delay.

10. All confiscated hemp drugs should be

sent

sent, by the Magistrate ordering the confiscatio
in a sealed package, to the District Excise - -
Officer of the District concerned. District --
Excise Officers should examine all the confiscat
Ganja, bhang, etc., and have destroyed in their
presence all that is not of good saleable - -
quality. Such as is really good should be --
forwarded to the Provincial Ganja Stores at --
Bangalore, whence it will be issued to the Taluk
treasuries for sale to the retail vendors. Care
must be taken to weigh the drugs and see that the
quantities correspond with those forwarded by the
Magistrates, any discrepancy being reported for
orders. The Ganja confiscated in any case shoul
not be dealt with until the appeal time has ---
expired.

11. Confiscated drugs should be sent by --
post as far as possible and in cases where large
quantities have to be sent and the cost of trans-
-mitting them by post is prohibitive, they should
be carefully packed and accompanied by a permit.

12. When a Magistrate orders the confisca-
-tion of cocaine and its preparations he should,
after the expiry of the appeal time, send them in
a sealed package to the District Excise Officer
concerned, who should send them to the Excise
Commissioner for disposal. The District Excise
Officer should weigh the drug on receipt to see
that the quantity corresponds with that forwarded
by the Magistrate, any discrepancies being report
-ed to the Excise Commissioner. The same instruc
-tions apply to cocaine and its preparations --
confiscated by departmental Officers. Phials of

Cocaine

Cocaine hydrochloride on which the original - - capsules, bands, etc., of the makers are intact and packets containing not less than ¼ ounce of the drug will be forwarded by the Excise Commis--sioner to the officer in charge of the Govern--ment Medical Stores; while phials in which the original capsules have been removed and packets containing less than ¼ ounce of the drug will be destroyed. " Preparations of Cocaine " other than Cocaine hydrochloride will be disposed of as the Excise Commissioner may deem fit.

All cases in which Novicain is confis--cated should be referred to the Excise Commis--sioner for orders as to disposal.

13. Liquor confiscated under the Fxcise -- Regulation can only be sold to persons licensed to sell the particular description of liquor in question, that is, in the case of foreign liquor to foreign liquor wholesale or retail vendors and in the case of country liquor to arrack - - independent shop-keepers or vend farmers, if any. It must not be disposed of to the shop-keepers -- under arrack renters without the consent of the -- latter. Confiscated liquor should be sold by -- auction, the upset price being the duty leviable thereon or disposed of without an auction, for any price in excess of the duty.

14. When property not ~~liable~~ liable to confisca--tion is seized, the officer inquiring into the case or the Court dealing with the case may on the close of the inquiry or trial, order the return of the property to the owner or his agent. Should no one appear to receive the property the - -

procedure ,

procedure laid down in rules 6 to 8 shall be followed.

Offg: Excise Commissioner.

18/4/40

Draft

Office of the Excise Commissioner
in Mysore,
Dated Bangalore, 25th April 1910.

No.

Circular Memorandum.

The following instructions in the matter of confiscation under the Mysore Excise Regulation, 1901, which have received the Sanction of Govt are issued for the guidance of all officers concerned:-

- - - - - - - -

1. Powers of Confiscation. The powers of confiscation vested in the department under the Excise Regulation are limited to those shown in the third clause of section 66, namely, when the offender is not known or cannot be found or when anything liable to confiscation, and not in the possession of any person cannot be satisfactorily accounted for.

2. Execution of orders of confiscation. All orders relating to confiscations and to releases of property under the Excise Regulation should, except where otherwise provided for, be carried out departmentally by an Officer not inferior in rank to an Inspector. If in such cases the property be in the custody of the Police, the Officer in charge of the Police Station should be informed by the Inspector, through the Officer executing the orders, if necessary, of their exact nature, and should be requested to return the property to him.

3. Orders of Confiscation. (1) All orders of confiscation or of imposition of fines shall be in

in writing, and shall be filed with the records of the case to which they relate.

(2) All decisions upon appeals preferred -- against such orders shall also be in writing and a copy of them shall be similarly filed.

(3) The owner of articles ordered to be confiscated and persons offered the option of -- payment of fines under section 66 of the Regula--tion shall be entitled to copies of all such -- orders and decisions in appeal upon payment of copying fees at the usual rates and of stamp ---- duty under article 8, Schedule I of the Mysore Court Fees Regulation 19~~60~~.

Provided that any officer granting any such copy may remit the payment of copying fees, on account of the poverty of the persons who - - would otherwise have to pay them or for other --- sufficient cause.

4. Disposal of articles in Excise cases departmentally released. In Excise cases where the offender is known, but is released with a - - warning as those of shop-keepers found in possess--ion of country spirits weaker than by more than one degree below the prescribed strength and of persons who appear to have offended through - - ignorance or inadvertance, confiscation cannot be ordered. If diluted liquor has been seized in connection with such cases, it should, be required as a condition of release that such liquor shall be destroyed before an Excise Inspector or other responsible Officer of the department if the - - quantity is inconsiderable, or, if it is large, that it shall be sent back to the Depot whence

it

it was originally purchased for the purpose of being re-blended at the cost of the shop-keeper concerned. As regards other articles seized in such cases, the only course open is to return them to the offender. In any case in which confiscation seems desirable, the offender must be prosecuted.

5. Disposal of articles in Excise Cases released under Head IV. It is only in doubtful cases which are released for want of proof, that Excise Officers are competent to pass order of confiscation. Their careful attention is drawn to section 65 of the Excise Regulation as to articles liable to confiscation and to the proviso to section 66 as to the procedure to be adopted.

Offg: Excise Commissioner.

D. No. 6098
1910

From The Deputy Commissioner
Chitaldrug District

To The Excise Commissioner
in Bangalore

Dated 15th February 1910

Despatched

Received

General No. C. no 63
No.

Enclosure No. Encl

Let this lie for reference
for order
11/2/10

Put up file
17.2.10

References:- His docket no 645 dated 19th July 1909 and the District magistrate's reply thereto no 112 dated 9.8.09 re the disposal of arrack and Ganja confiscated

---

With reference to the above has the honor to request the favor of an early reply as to whether the arrack and Ganja has still to be sent to the Bangalore Central Distillery

for Deputy Commissioner
Chitaldrug Dt.

No. 157 D. No. 4569

Office of the Government Advocate in Mysore,

Bangalore dated, 23rd December 1909.

From,

The Government Advocate in Mysore,

Bangalore.

To,

The Excise Commissioner in Mysore,

B A N G A L O R E.

Sir,

In reply to your letter No.4579 dated 27th November 1909, I have the honour to state that the Rules that may be framed by Government under the Excise Regulation section 29 para (o) will have the force of law and will be binding on the Magistrates and officers directing the confiscation of articles seized under the Regulation.

The Rules framed by the Government of Madras under the corresponding provision of their Abkari Act empowered the officers adjudging confiscation to direct the sale or destruction of the thing seized or detained under the Act (vide Excise Manual page 92). I was not able to get at the full decision of the Madras High Court referred to by you but from the wording of the note made of it in the Excise Manual, I infer that the decision is probably based on the said Rule. When the Rule empowered the Magistrate to ---- direct the sale of the thing confiscated, the power "to -- give directions as to the mode of sale" is necessarily --- implied, especially when the Rule is silent on the point.

I have the honour to be,

Sir,

Your most obedient servant,

S. Narayana Rao

Government Advocate.

Letters are referred
for orders
- HHF 2-2-1/10

C.C
Recruiting
3/12/09

Submitted with the records.
Sd.
3.1.10.

Bangalore,

17th December 1909.

Dear Mr. Shamanna,

Re: the order of confiscation.

I think a personal discussion of the question will enable me to see the difficulty you feel. - Please let me know if you will kindly meet me at my Office, in the Public Offices on Monday the 20th Instant at 2. P.M.

I was not able to find out where the Criminal Revision Case No.545 of 1908 is reported. Please send me a copy of the same or bring it with you - on the said date.

Yours faithfully,

S. Narayana Rao

The Govt. Advocate is of opinion that with regard to articles that are not liable to be disposed of without notice the Police should abide by the Conditions of the 2nd Rule of Sch. A of the Carriage

With regard to other articles, such as implements &c., the provisions of the Pro. Code will apply —

23/12/

Bangalore

22. 12. 09

Dear Mr. Shamanna,

Will you kindly send
per bearer the decisions
of the Madras High Court
referred to in your letter?

Yours truly
S. Narayana Rao
Govt Advr.

P.S. I may see you in your office on my way home at 2 P.M. to-day. SNR

Before the supply of Sugar was undertaken to be made by Govt. & was in the hands of the monopolists the practice, I think, was to sell the confiscated sugar to them. Now that Govt are supplying a particular kind it is necessary that there should be no chance of any other kind finding its way into the market, except under control. If the rights can alter the sale locally, this will lead to the dangers mentioned in para 7. Similarly in the case of Arrack

The decision in Red[n] case 47 & 472 the m[t] court, I think

Note

In this docket No. 28 dated 11-7-09 the Deputy Commissioner Chittaldroog District solicited instructions as to the disposal of 135½ Gallons of Ganja and 5 bottles of Hashish arrested in connection with certain Excise cases in which the said articles were ordered by the Magistrate to be confiscated. In this office docket No. 1161 dated 20-7-09, these articles were ordered to be sent to the distillery. In connection with this order the Deputy Commissioner of Chittaldroog in the capacity of District Magistrate has written to say that under Rule XXXVI of Government Notification No. 11387-Ex-3-1901 dated the 8th January 1901 it is not necessary to obtain orders of the Excise Commissioner for the disposal of articles less than 2 gallons. He further states that there is no provision either in the Excise Regulation or in the Rules framed thereunder as to how Excise articles other than arrack should be dealt with. In these circumstances he asks if it is still necessary to send all the confiscated articles in the case to the Central Distillery.

2. There is no doubt much confusion exists about the subject of confiscation under the Bombay Excise Regulation V of 1901 and it is feared that the rule referred to above is not quite correct. Besides a monthly statement has been

prescribed which is called "State-ment showing the fines imposed and confiscation of property ordered by the Deputy Commissioner under the Excise Regulation". And as a matter of fact under the Regulation now [illegible] the Excise Commissioner and that too under clause 3 of section 66 can order confiscations. If the Excise Commissioner has delegated this power to another officer, such officer may order confiscations. And so far, no delegation has been made. It therefore follows that the heading of the State-ment is wrong.

3. It is well that the subject of confiscation under the Excise Regulation is discussed and the necessary instructions in the matter issued. The sections of the Regulation dealing with the subject are ~~[illegible]~~ 65, 66 and 67. The first of the sections deals with what things are liable to confiscation. In Criminal Revision Case Nos 471 and 472 of 1886, referred by the Acting District Magistrate, Kistna, the High Court made the following order:—

Section 65 authorises confis-cation of liquor, &c., in respect of which an offence has been committed against the Act. The order to sell by auction was, "as supplied by the referring officer, unauthorised and his levy set aside. The Magistrate is to pass orders for confiscation and not issue orders as to how confiscated liquor should be disposed of.

is based on this principle.

& Generally speaking the right who has authority to order confiscation, should have power for the disposal of the articles, but in the case of Excisable articles the rules will have to be framed about the disposal to avoid the danger mentioned above.

See 28 clause (o) clearly gives the power to Govt to frame such rules. as also Secs XXIV & XXV of the Opium Act. I am not sure if the decision in 545 of the Mn. H. Court takes away this power. Anyhow, I have no doubt an authoritative opinion from the Govt Advocate will remove this doubt. The Dft may issue

[illegible]
26.4.09

But in criminal revision case No. 545 of 1908, the Madras High Court held that the Magistrate who adjudges confiscation has power to direct the sale or destruction of the confiscated articles and to give directions as to the mode of sale.

4. Section 66 deals with the mode of ordering confiscation. It deals of confiscation magisterially as well as departmentally. This is the only section which relates to confiscation departmentally. The powers of confiscation vested in the department under the Excise Regulation are limited to those shown in the third clause of the section, namely, when the offender is not known or cannot be found or when anything liable to confiscation, and not in the possession of any person cannot be satisfactorily arrested for In another note it has been submitted that it is necessary to delegate the powers of the Excise Commissioner under this section to Deputy Commissioners and District Excise Officers. In Excise cases where the offender is known but is released with a warning, confiscation cannot be ordered. It is only in the cases of releases for want of proof that Excise officers are competent to pass order of confiscation. They should attend carefully to section 65 as to articles liable

to confiscation and to the proviso to section 66 as to their procedure. Of course in cases in which it is decided to prosecute the Magistrate must adjudicate confiscation. Cases will be rare in which it is advisable to order confiscation but not to prosecute the offender.

5. Section 67 lays down that in Excise cases which are compounded, the articles liable to confiscation may be released on payment of the value thereof. This section refers only to minor offences such as breaches of license conditions where generally, there is no attempt at defrauding Government of its revenue.

6. Under clause (o) of section 29 the Government may from time to time frame rules for the disposal of articles confiscated and of the proceeds thereof. A doubtful point that arises in this connection is, whether the aforesaid power of Government to frame rules for the disposal of articles confiscated and of the proceeds thereof by the Magistrate also. In Madras the rules framed in this connection relate both to Magisterial and departmental confiscations. And here it may be observed that all these rules were framed prior to April 1909 up to which date the decision of the Madras

High Court in Criminal Revision cases Nos 471 and 472 of 1886, that the Revisional should pass orders for confiscation and not issue orders as to how confiscated liquor should be disposed of, was in force. This decision has now been overruled by the latest order in Criminal Revision case No. 545 of 1908, that the Revisional should adjudge confiscation, but power to direct the sale or destruction of the confiscated article and to give directions as to the mode of sale. In view of this latest decision a very strong doubt is created as to the power of Government or its delegate to frame rules as to the mode of disposal of articles ordered to be confiscated by the Revisionals. The Government Advocate it is submitted may be addressed in the matter and then as then there will be an authoritative basis to proceed upon.

7. Except the rule referred to in para one supra there are no rules in the State regarding the disposal of confiscated articles and of the proceeds thereof. This rule deals with the disposal of liquor and is only a revision of the rules framed under the Excise Act in force prior to the Bombay Excise Regulation V of 1901. It also deals with rewards for which a separate set of rules

has been framed by Government. The rule says that all ~~[illegible]~~ potable liquor less than 2 gallons should be sold. Here the difficulty arises as the purchaser. The country persons have to be supplied arak without a licensed permit. Besides the local authority may be put to loss if the liquor is purchased by another man. Besides this course may lead to illegal sales.

8. There are no rules regarding the disposal of other excise articles

9. Section 12 of the Opium Act corresponds to section 66 of the Excise Act and section 13(a) to section 29(o). Rules for the disposal of confiscated opium have been framed — XXIV and XXV — of these rules appear to apply to opium confiscated by the Excise officials as well as by the Police Department.

10. It is therefore necessary that a set of rules ought to be framed but before doing so it has to be ascertained whether ~~the~~ such rules could have operation over confiscations ordered by the Excise officials. The form the rules must take will depend upon the answer to this question.

A draft by the Govt Advocate is submitted for approval or otherwise orders.

12.T.
26.XI.09.

4579

No. 1

The Government Advocate

26. XI. 09.

29

Sir,

I have the honour to state that sections 66, 66 and 67 of the Excise Regulation IV of 1901 deal with the subject of confiscation. Section 66 deals with the mode of ordering confiscation both by the Magistrate and the Department. The powers of confiscation vested in the department are limited to those given in the third clause of the section, namely, when the offender is not known or cannot be found or when any thing liable to confiscation, and not in the possession of any person cannot be satisfactorily accounted for. Under clause (o) of section 29 the Government may from time to time frame rules for the disposal of articles confiscated and of the proceeds thereof. In Criminal Revision Cases Nos. 471 and 472 of 1886, the Madras High Court held that the Magistrate should pass orders for confiscation and not issue orders as to how confiscated liquor should

be disposed of. And in Criminal Revision Case No. 545 of 1908, the ~~Board~~ same High Court over-ruling the above decision held that the Executive has ~~no~~ discretion to direct the sale or destruction of the confiscated article and to give directions as to the mode of sale.

2. Section 12 of the Opium Act exactly corresponds to section 66 of the Excise Regulation and section 13(a) to section 29(o). Under the Opium Act rules for the disposal of things confiscated have been framed — XXIV and XXV — and these appear to apply to confiscations ordered by the Executive as well as by the Departmental.

3. In these circumstances I beg to be enlightened as to whether rules framed under clause (o) of section 29 [illegible] of the Excise Regulation 1 of 1901 have operation over the disposal of articles confiscated by the Executive and of the proceeds thereof. Or in other words, whether rules can be ~~made~~ framed by Government to regulate the disposal of articles ordered to be

Complicated by Narcissistic
of the proceedings

I have th

BV
26.4.09.

D. No. 1292

~~1908-09.~~

From

K. Sreenivasa Rao Esqre
District Magistrate
Chitaldrug District

To

A. A. Sharkey Esqre
Excise Commissioner in Mysore
Bangalore

Dated 9th
Despatched 10th } August 1909

Received

General No. 112
No.

Enclosure No.

Sir,

Adverting to your docket No. 645 dated 19th July 1909 in re the disposal of the confiscated Ganja and arrack relating to certain cases of the Holalkere range, I have the honor to bring to your notice that under Rule XXXVII, Government Notification No. 11387 - Ex-3-1901 dated 8th January 1902, it is not necessary to obtain the orders of the Excise Commissioner for the disposal of arrack less than 2 gallons. There appears to be no provision either in the Excise Regulations

Refer to U.S.O.

GPE—2,00,000—12-4-09

Regulation or in the Rules framed thereunder as to how Excise articles of this Arrack should be dealt with.

2. The Rules alluded to above are, I believe, still in force. I request to be informed if it is still necessary to send all the confiscated articles in this case to the Central Distillery for disposal.

I have the honor to be

Sir,

Your most obedient Servant

[signature]

District Magistrate

Chittagong District.

1909.

To

The Deputy Commissioner
Chitaldrug District.

Dy 19th July 1909. 645
No No

His No 85 of the 11th instant
in re the disposal of the
confiscated ganja and arrack
relating to ~~the~~ certain cases
of the Holalkeré Range.

With reference to the above
has the honor to state that
the ~~above~~ confiscated articles
may be sent to the Central
Distillery for ~~being dealt with~~
~~according to rules~~. disposal
arrangements being reported to
the ~~same~~ Excise
this office A copy of the Judgment
in the case may be obtained from the
Court on payment of Rs
for Excise Commr

Under Exception received

Rs
2/7.

1909.

D. Dr. 311

From.

The Deputy Commissioner
Chitaldrug District

To

The Excise Commissioner
in Mysore
Bangalore

Dated 6/7/09.
Despatched 11-7-09
General No. 25

cc

Enclosures No. as per

In forwarding herewith correspondence ending with the Holalkere Range Inspector's report No. 1821 dated 12/6/09. regarding the disposal of the confiscated Ganja and Arrack relating to the marginally noted Crime numbers of the Holalkere Range, has the honor.

Dt. Crime Nos. 89/07-08
-do- 103/08-09:
-do- 95, 96, 97, 98/08-09.

Encl

135½ Bottles of Ganja.
5 bottles of Medical Arrack

Item will be sent 12-7-09
to the Chemical Examiner for disposal
a report of the receipt
being made to this Office

577/09.

6.7.09.

chandu ale will be no good as bot

honor to request ~~to be informed~~ whether the confiscated articles referred to in the Inspector's report are to be sent to the Bangalore Central distillery.

[illegible]
9. 9. 00

For Deputy Commissioner
Chitaldrug District.

No. 1574

Asst. clerk
Attend
27/4/09

No.
231

L 1350
29/5/09

G.R.S. 28.]

File No. 220
Serial No. 89 2

Diary No. of letter replied to 4380

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

(874)

, *the* 19

Date of issue 22nd November 10

Signed by N Hiriyanna

READ— Letter no. 9286 & 2874/10 from the Excise Commissioner submitting for approval a draft notification & rules for the disposal of articles confiscated & levied by way of compensation under the provisions of the Mysore Excise Regulation and also a draft circular containing subsidiary instructions on the subject

ORDER THEREON—No.

Order thereon no

No. B 2630-1
22-11-10

over

SUBJECT.

GPB—5,000—7-5-09

Cpml. are pleased to
observe the draft
Notification accd
the Circular order
~~referred to~~ submitted
by the Excise Comrs with
the letter read above. As it is necessary to
make it clear that the Circular has received the
approval of Govt, the words "which have received
the Sanction of Govt" have been inserted between
"1901," and "are" in the
preamble to the Circular.

H.H.S.

Do the Excise Comrs with a request to forward to Cpml a dozen
copies of the notn & the Circular
the Registrar Chief Court with
the Govt of the draft notn.

Recd
5/5/10

5/5/10